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EXAMINER

PRICE, CARL D

ART UNIT	PAPER NUMBER
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3749

DATE MAILED: 04/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/927,106

Applicant(s)

COLEMAN ET AL.

Examiner

CARL D. PRICE

Art Unit

3749

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 January 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 26-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 26-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION**Response to Arguments**

Applicant's arguments with respect to claims 26-28 have been considered but are moot in view of the new ground(s) of rejection.

Claim Summary

Applicant has canceled claims 1-25.

New claims 26-28 have been added.

Objection to the Specification

Applicant's response to the objection to the specification made by the examiner in the office action mailed on 10-15-2002 has been reviewed.

The portion of the text originally filed by applicant and objected to by the examiner is reproduced herein below (page 8, lines 15-27):

15	proper position and a user can slide the release lever 37 away from the leg member latch 33 until the hook and loop are substantially in alignment. The hook and loop can be engaged by the user then releasing the leg member lever 37. It is preferable that the leg
20	fuelled by a fuel source 46, such as a 1-pound LP tank. In another embodiment, a fuel source 46' comprising a 20-pound LP tank can be used to fuel the heat source 46. In this
25	configuration, it is preferable that a connection hose 50 is used as a conduit between the fuel source 46 and the grill itself 10. Both fuel sources 46, 46' can be interchangeably received by a quick connect-valve 48 extending from the grill 12. It is preferable that the
8	

Art Unit: 3749

Applicant's response to the objection to the specification is as follows (page 3, section II, of applicant's remarks):

II. Response to Objections - Specification

The disclosure is objected to due to blurred missing text on page 8 in the application as filed. Office action at p. 2. Applicant respectfully submits herewith in bold the text missing in the blurred section of page 8:

...It is preferable that the leg member latch 33 can be operated with one hand of a user.

The grill 10, in a preferred embodiment, is fueled by gas, such as propane. Common propane tanks on the market today come in various sizes, of which the grill 10 is capable of accommodating, as illustrated in FIG. 2. In one configuration, the heat source of the grill 10 (illustrated in FIG. 8 and discussed in detail hereafter) can be fueled by a fuel source 46, such as a 1-pound LP tank. ...

It is believed that the missing text and blurred line is a result of a printer error.

Applicant's comment that "...the missing text and blurred line is a result of a printer error." is noted. However, applicant has presented no formal amendment to the specification correcting the text of the specification. The objection to the specification therefore has not been overcome by applicant's response. Additionally, while the content of the presumed missing text appears generally in the drawing figures applicant has failed to suggest the basis for support of matter described in the suggested text. Most notably, applicant has not indicated support for the phrase "... member latch 33 can be operated with one hand of a user."

Applicant has presented new claims of a scope that differ from those previously examined. In particular, applicant's claim 26 now requires "... a side shelf having a

Art Unit: 3749

substantially planar surface and extending outwardly from said firebox.” Applicant’s previous claim 14 (now cancelled), for example, recites “... a side shelf having a substantially planar surface and being removably fixed to said firebox, and extending outwardly from said grill.

Similarly, new claim 28 requires that “... said side shelf is removably attached to said firebox.”

Applicant’s previous claim 14 (now cancelled), for example, recites “... a side shelf having a substantially planar surface and being removably fixed to said firebox, and extending outwardly from said grill.

Applicant’s remarks directed to the prior art previously relied on to reject the claims have been fully reviewed. With regard to Hahn and Elliot applicant argues the following (page 10, section d of applicant’s remarks):

Both the Hahn and Elliott references fail to teach *a side shelf or a fuel aperture disposed in the side shelf*. Furthermore, the Hahn reference teaches an apparatus arranged and configured for placement on a table top. As such, an area on which to rest items, such as a side shelf, is not likely desirable.

At least because neither Hahn nor Elliott teach a limitation of a side shelf or a fuel aperture disposed therein, as in Applicant’s claim 26, the combination of Hahn in view of Elliott does not render claim 26 obvious. In addition, in that dependent claims 27 and 28 depend from claim 26 and therefore include all the limitations contained therein and are allowable, Applicant respectfully requests allowance of these dependent claims.

Art Unit: 3749

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

The indicated allowability of subject matter in previous claim 15 (now cancelled) is withdrawn in view of applicant's newly added claims and the newly discovered reference(s) to Ducate, Jr. et al, Raymer et al, Oster (U.S. Patent No.- 1582346) and Koziol (U.S. Patent No.- Des. 326,207).

Rejections based on the newly cited reference(s) follow.

Drawings

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "50" has been used to designate both the "aperture" (Figure 1) and the "hose" (Figure 2). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Objection to the Specification

The disclosure is objected to because of the following informalities: On page 8, line 18 is blurred. Since the text of this line cannot be read, the sentence beginning in line 17 and ending in

Art Unit: 3749

line 19 is incomplete. This sentence is as follows: " It is preferable that the leg ... (blurred missing text appears here) ... fueled by a fuel source 46, such as a 1-pound LP tank."

Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 26: rejected under 35 U.S.C. 103(a)

Claims 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ducate, Jr. et al (U.S. Patent No.- 4886045) (newly cited) in view of Elliott (U.S. Patent No.- 5065734)(of record).

With regard to claim 26, the language 1) a "fuel" aperture (claim 26, line 10) and 2) "to provide access to a fuel source" (claim 26, last line) are deemed recitations of intended use. A

Art Unit: 3749

recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). In order for a prior art reference to anticipate, or meet, this limitation of the claim it need only have an "... aperture disposed in said side shelf ..." (according to the broader claim 26) and the "... aperture disposed in said side shelf ..." comprising a "recess disposed in an edge of said side shelf" (according to claim 27), a fuel source having not been positively recited, or otherwise defined or described, in the claim, or in relationship with any of the structure positively recited in the claim.

Ducate, Jr. et al disclose a portable grill apparatus comprising: a grill having a hinged hood (12) and a firebox having at least one cooking surface (18) thereon; a burner (16) assembly being disposed in the grill, the burner assembly being capable of heating an interior portion of the grill. Ducate, Jr. et al show a frame (11,46) arranged and configured to substantially correspond to the grill firebox (14; figure 8) and to receive and support the grill. Additionally, Ducate, Jr. et al show a removable side shelf (80,92) extending outwardly from the firebox. The shelf (80,92) includes an aperture (at 94) configured for access to a burner (92). The burner of Ducate, Jr. et al includes a fuel source necessary to produce a flame, and is mounted in the aperture. The grill chamber (14) of Ducate, Jr. et al being arranged and configured to substantially correspond to the frame and releasably engages with the frame by way of fasteners

Art Unit: 3749

(116). Ducate, Jr. et al however does not show or disclose adjustable legs extending from the frame.

Elliott teaches, form the same portable cooking grill field of endeavor as Ducate, Jr. et al, pivotal adjustable legs (31) connected to a frame (32,38) being arranged and configured to substantially correspond to a grill (11) and to receive and support the grill and which releasably engages and support the grill, by way of fasteners (13).

In regard to claim 26, the burner (92) of Ducate, Jr. et al includes a fuel source, necessary to produce a flame. The aperture in which the burner is mounted is deemed the structural and functional equivalent to applicant's broadly claimed fuel aperture configured to provide access to a fuel source. Also, for the purpose of providing additional means to collapse and for aiding transporting the grill support frame, it would have been obvious to a person having ordinary skill in the art to modify the frame of Ducate, Jr. et al to be adjustable, in view of the teaching of Elliott.

Claims 26: rejected under 35 U.S.C. 103(a)

Claims 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Raymer et al (U.S. Patent No.- 5090398)(newly cited) in view of Elliott (U.S. Patent No.- 5065734)(of record).

Art Unit: 3749

With regard to claim 26, the language 1) a “fuel” aperture (claim 26, line 10) and 2) “to provide access to a fuel source” (claim 26, last line) are deemed recitations of intended use. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). In order for a prior art reference to anticipate, or meet, this limitation of the claim it need only have an “... aperture disposed in said side shelf ...” (according to the broader claim 26) and the “... aperture disposed in said side shelf ...” comprising a “recess disposed in an edge of said side shelf” (according to claim 27), a fuel source having not been positively recited; or otherwise defined or described, in the claim, or in relationship with any of the structure positively recited in the claim.

Raymer et al disclose a portable grill apparatus comprising: a grill having a hinged hood (12) and a firebox having at least one cooking surface (18) thereon; a burner (16) assembly being disposed in the grill, the burner assembly being capable of heating an interior portion of the grill. Raymer et al show a frame (11,46) arranged and configured to substantially correspond to the grill firebox (14; figure 8) and to receive and support the grill. Additionally, Raymer et al show a removable side shelf (80,92) extending outwardly from the firebox. The shelf (80,92) includes an aperture (at 94) configured for access to a burner (92). The burner of Raymer et al includes a fuel source necessary to produce a flame, and is mounted in the aperture. The grill chamber (14) of

Art Unit: 3749

Raymer et al being arranged and configured to substantially correspond to the frame and releasably engages with the frame by way of fasteners (116). Raymer et al however does not show or disclose adjustable legs extending from the frame.

Raymer et al discloses:

(10) **Referring now to FIG. 11, the optional accessory side burner is illustrated at 90.** The side burner provides an auxiliary heat source similar to those found on indoor gas ranges. The auxiliary side burner has its own **valve control knob 92** and is supplied with fuel from fuel tank 42 through T-fitting 96 and fuel supply hose 98. The main burner 44 (FIG. 18) of barbecue grill 30 is also supplied by fuel tank 42 through T-fitting 96 and fuel supply hose 100. **The auxiliary side burner is supported on frame 32 by brackets 102 constructed generally the same as brackets 60 of the accessory shelf 48.**

(11) In the case of the accessory side burner, it is important to prevent the burner from rotating out of the horizontal position. Accordingly, locking means 104 in the form of a wing nut and bolt combination are provided as illustrated in FIG. 12. During assembly of the side burner, the user hangs the bracket supporting means on the supporting pins, similar to the manner in which the accessory shelf is attached. **Then, the bolt and wing nut are installed through the holes provided in bracket and frame to securely lock the burner in the horizontal use position.**

(12) FIG. 13 illustrates additional details of the preferred side burner assembly. As shown, the side burner includes a housing 106 with appropriate opening 108 to accommodate the flame from burner 110. Burner 110 and the associated venturi 112 are secured to the side walls of the housing by a bracket 114. Valve 116 supplies fuel to the venturi through outlet tube 118 adjacent air intake 119. Valve 116 is coupled via nipple 120 to the hose 98 (FIG. 11).

Elliott teaches, form the same portable cooking grill field of endeavor as Raymer et al pivotal adjustable legs (31) connected to a frame (32,38) being arranged and configured to substantially correspond to a grill (11) and to receive and support the grill and which releasably engages and support the grill, by way of fasteners (13).

In regard to claim 26, the burner (92) of Raymer et al includes a fuel source valve control knob (92), necessary to control flow of fuel to the burner flame. The aperture in which the fuel source valve control knob (92) is mounted is deemed the structural and functional equivalent to applicant's broadly claimed fuel aperture configured to provide access to a fuel source. Also, in regard to claim 26, for the purpose of providing additional means to collapse and for aiding transporting the grill support frame, it would have been obvious to a person having ordinary skill in the art to modify the frame of Raymer et al to include an adjustable leg assembly extending from a frame, in view of the teaching of Elliott.

Claims 26-28: rejected under 35 U.S.C. 103(a)

Claims 26-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Koziol (U.S. Patent No.-Des. 326,207)(newly cited) in view of Oster (U.S. Patent No.- 1582346)(newly cited).

With regard to claims 26-28, the language 1) a "fuel" aperture (claim 26, line 10) and 2) "to provide access to a fuel source" (claim 26, last line) are deemed recitations of intended use. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). In order for a prior art reference to

Art Unit: 3749

anticipate, or meet, this limitation of the claim it need only have an "... aperture disposed in said side shelf ..." (according to the broader claim 26) and the "... aperture disposed in said side shelf ..." comprising a "recess disposed in an edge of said side shelf" (according to claim 27), a fuel source having not been positively recited, or otherwise defined or described, in the claim, or in relationship with any of the structure positively recited in the claim.

Koziol shows gas burner type grill firebox (figure 1), known to have a burner located therein, being covered by a having a hinged hood side shelves being removably attached to the firebox. Koziol also shows alternative support frames on which the firebox can be mounted (see figures 1 and 6). Koziol also shows (figures 4 and 8) a planar side shelf having an aperture (not referenced) defined by a recess disposed in an edge of the side shelf. Koziol however does not show or disclose an adjustable leg assembly extending from a frame arranged and configured to substantially correspond to the grill firebox and to receive and support the grill. And, wherein a shelf includes an aperture defined by a recess disposed in an edge of the side shelf and through which a fuel gas conduit and control knob extend to provide access to a fuel source.

Oster teaches, form the same portable cooking grill field of endeavor as a portable grill apparatus comprising: a firebox (D) having at least one cooking surface (59) thereon; a burner (55) assembly being disposed in the grill, the burner assembly being capable of heating an interior portion of the grill. Oster shows a leg assembly extending from a frame (11) arranged and configured to substantially correspond to the grill firebox and to receive and support the grill. Additionally, Oster shows a removable planar side shelf (80) extending outwardly from the firebox. The shelf (80) includes an aperture (not referenced) defined by a recess disposed in an

Art Unit: 3749

edge of the side shelf and through which a fuel gas conduit and control knob (not referenced) extends to provide access to a fuel source (60). Oster however shows or discloses adjustable legs (C) extending from the frame (11).

In regard to claims 26-28, for the purpose of providing an alternative means to support the firebox, permitting ease of storage and transportation, and for providing a suitable support location for a fuel source, it would have been obvious to a person having ordinary skill in the art to modify Koziol to include an adjustable leg assembly extending from a frame arranged and configured to substantially correspond to the grill firebox and to receive and support the grill. And, wherein a shelf includes an aperture defined by a recess disposed in an edge of the side shelf and through which a fuel gas conduit and control knob extend to provide access to a fuel source mounted beneath the shelf, in view of the teaching of Oster.

Conclusion

See the attached PTO FORM 892 for prior art made of record and not relied upon and which are considered pertinent to applicant's disclosure.

Applicant should particularly take note Carr which shows a shelf (28) with an aperture defined by a recess disposed in an edge of the side shelf and through which a fuel gas conduit and control knob (21,22) can be accessed.

THIS ACTION IS MADE FINAL

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

USPTO CUSTOMER CONTACT INFORMATION

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CARL D. PRICE whose telephone number is 703-308-1953. The examiner can normally be reached on Monday through Friday between 6:30am-3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ira Lazarus can be reached on 703-308-1935. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3749

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



CARL D. PRICE
Primary Examiner
Art Unit 3749

Cp